REMARKS

Applicants respectfully request entry of amendments to claims 1 and 14. Please cancel claims 5, 11, and 15-39, without prejudice or disclaimer. Support for the amendments can be found throughout the specification, including the sequence listing, and the originally filed claims and, therefore, do not add new matter.

Applicants submit that pending claims 1-4, 6-10, 12-14 and 40 are in condition for allowance, or are in better condition for presentation on appeal, and respectfully request that the claims as amended be entered.

Rejections Under 35 U.S.C. § 112, second paragraph

Claims 1-4, 14, and 40 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite.

Applicants traverse the rejection, as it might apply to the amended claims, including claims dependent therefrom, for the reasons given below.

While Applicants do not acquiesce to the reasoning offered in the Office Action, and to expedite prosecution toward allowance, claims 1 and 14 have been amended to recite a definite article before "sequence as set forth in." As such, the claim embraces the whole sequence set forth in the recited sequence identifier. Accordingly, one of skill in the art would understand the metes and bounds of the claims.

For these reasons, Applicants respectfully request that the rejection be withdrawn.

Rejections Under 35 U.S.C. § 102(b)

Claims 1-4, 6-9, 12, 14, and 40 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Kunst et al. Applicants traverse the rejection as it might apply to the amended claims, including claims dependent therefrom, for the reasons given below.

The Office Action alleges, in pertinent part, that the cited reference teaches the elements as recited in the claims. The instant claims have been amended to recite that the isolated nucleic acid comprises sequence denoted by a specific sequence identifier: i.e., SEQ ID NO: 9. Applicants submit that review of SEQ ID NO: 2909 and 2870 demonstrates that these sequences do not anticipate SEQ ID NO: 9, 26, or 27 as claimed.

Again, Exhibits G and H (submitted with the Amendment of March 23, 2007) represent the nucleic acid sequences denoted by sequence identifiers 2870 and 2909 of Kunst et al. At minimum, because both SEQ ID NO: 2870 and 2909 have fewer nucleotides than SEQ ID NO: 9 (2556/759 vs. 2640), neither SEQ ID NO: 2870 nor 2909 comprise the sequence as set forth in SEQ ID NO:9.

Further, Applicants submit that there is no teaching in Kunst et al. which would lead one of skill in the art to make the primers as recited. In the same fashion that genomes do not inherently anticipate isolated structural genes for want of enablement, Kunst et al. do not provide sufficient guidance to specifically identify the primer sequences as claimed (see, e.g., Chester v. Miller, 15 U.S.P.Q.2d 1281 (Fed. Cir. 1990), where the court stated that "[t]o be prior art under section 102(b), the reference must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure."). Both SEQ ID NOS: 2870 (2556 nt) and 2909 (759 nt) are orders of magnitude longer that either SEQ ID NO: 26 (21 nt) or 27 (20 nt). And while Kunst et al. may or may not suggest the use of primers for the detection of *Listeria*

contamination, there is no guidance which would direct the skilled artisan to choose the specific primers as claimed among all the possible alternative fragments that comprise SEQ ID NOS: 2870 and/or 2909.

As stated in Hybritech Inc. v. Monoclonal Antibody, Inc., 231 U.S.P.Q. 81 (Fed. Cir. 1986), "It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention."

Therefore, because the instant claims a) recite a sequence identifier which is not taught or suggested in the cited reference and b) recite specific primer sequences which would not be enabled by the teachings of the cited reference, Kunst et al. do not anticipate the claimed invention.

Failure of the prior art to meet every element of the claimed invention does not meet the standard under §102. For these reasons, Applicants respectfully request that the rejection be withdrawn.

In light of the above, Applicants submit that this application is now in condition for allowance and therefore request favorable consideration. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact Applicants' counsel, James M. Heintz at 202.799.4171.

Respectfully submitted,

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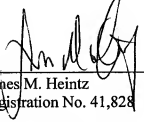

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